

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS,  
CORPUS CHRISTI DIVISION**

**DIAGNOSTIC AFFILIATES OF  
NORTHEAST HOU, LLC D/B/A 24  
HOUR COVIDRT-PCR LABORATORY**  
*Plaintiff,*

v.

**ENTRUST, LLC, D/B/A 90 DEGREE  
BENEFITS AND TEXAS SCHOOL  
HEALTH BENEFITS PROGRAM**

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**C.A. No. 2:22-CV-00013**

*Defendants.*

**AMENDED COMPLAINT AND JURY DEMAND**

Diagnostic Affiliates of Northeast Hou, LLC d/b/a 24 Hour Covid RT-PCR Laboratory (“24 Hour Covid” or “Plaintiff”) by and through its attorneys, brings its Amended Complaint against Entrust, LLC d/b/a 90 Degree Benefits (“90 Degree Benefits”) and the Texas School Health Benefits Program, (“TSHBP”) and allege as follows:

**NATURE OF THE CLAIMS**

1. 24 Hour Covid is a CLIA certified high complexity laboratory that has requested emergency use authorization under Section 564 of the Federal Food, Drug, and Cosmetic Act; therefore, has all authorizations and/or approvals necessary to render and be reimbursed for Covid Testing services.<sup>1</sup> At the height of the pandemic 24 Hour Covid operated seven specimen collection sites located across the States of Texas and Louisiana, and partnered with employers and independent school districts across Texas to render Covid Testing services to employees, teachers, students, and other staff members.<sup>2</sup>

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<sup>1</sup> See 21 U.S.C. § 360bbb-3.

<sup>2</sup> Humble ISD Expands Options for Student Covid Testing (<https://www.humbleisd.net/covid19studenttesting>); Humble ISD expands free COVID-19 testing options to provide easier access for students

2. 90 Degree Benefits is licensed in the State of Texas to act as a Third Party Administrator and serves in the trusted role of third party claims administrator for self-funded health plans including the TSHBP.

3. Importantly, 24 Hour Covid does not have an in-network contract with 90 Degree Benefits or TSHBP, and despite 90 Degree Benefits giving the impression of its intent to negotiate an amount to be paid to 24 Hour Covid for Covid Testing services, its actions appear to be no more than “smoke and mirrors” given their lack of response after 24 Hour Covid attempted – repeatedly – to resolve this matter.

4. Under ordinary circumstances, not all self-funded health plans administered 90 Degree Benefits, like TSHBP, offer its members with access to OON providers and facilities. However, pursuant to Section 6001 of the FFCRA, as amended by Section 3201 of the CARES Act, all group health plans and health insurance issuers offering group or individual health insurance coverage are required to provide benefits for certain items and services related to diagnostic testing for the detection or diagnosis of COVID-19 without the imposition of cost-sharing, prior authorization, or other medical management requirements when such items or services are furnished on or after March 18, 2020, for the duration of the COVID-19 public health emergency regardless of whether the Covid Testing provider is an in-network or out-of-network (“OON”) provider.<sup>3</sup>

5. Furthermore, Section 3202(a) of the CARES Act provides that all group health plans and health insurance issuers covering Covid Testing items and services, as described in Section 6001 of the FFCRA, must reimburse OON providers in an amount that equals the cash

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(<https://communityimpact.com/houston/lake-houston-humble-kingwood/education/2021/01/07/humble-isd-expands-free-covid-19-testing-options-to-provide-easier-access-for-students/>).

<sup>3</sup> See CMS FAQ Parts 42, 43, and 44, The FFCRA and the CARES Act.

price for such Covid Testing services as listed by the OON provider on its public internet website or to negotiate a rate/amount to be paid that is less than the publicized cash price.

6. Here, 90 Degree Benefits and TSHBP have intentionally disregarded its obligations to comply with its requirements to cover Covid Testing services without the imposition of cost-sharing and other medical management requirements pursuant to Section 6001 of the FFCRA, and, in instances where Plaintiff was reimbursed for its Covid Testing services, 90 Degree Benefits and TSHBP have failed to reimburse Plaintiff in accordance with Section 3202(a) of the CARES Act.

### **PARTIES**

7. 24 Hour Covid is a limited liability company organized under the laws of the State of Texas, with its company headquarters located at 22751 Professional Drive, Suite 210, Kingwood, Texas 77339. 24 Hour Covid has lawful standing to bring in all claims asserted herein.

8. Defendant Entrust, LLC, d/b/a 90 Degree Benefits (“90 Degree Benefits”) is a domestic limited liability company organized under the laws of the State of Texas with its principal place of business located at 22322 Grand Corner Drive, Suite 200, Katy, Texas 77494-5941. 90 Degree Benefits may be served with process by serving its registered agent for service at CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

9. Defendant Texas School Health Benefits Program (“TSHBP”) is a self-funded health plan subject to Section 6001 of the FFCRA, as amended. TSHBP may be served with process at its principal place of business located at 2175 N. Glenville Drive, Richardson, Texas 75082.

## **JURISDICTION AND VENUE**

10. This Court has federal question subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1131, as 24 Hour Covid asserts federal claims against Defendants in Count I under the FFCRA and the CARES Act.

11. The Court has personal jurisdiction over the parties because 24 Hour Covid submits to the jurisdiction of this Court, and Defendants systemically and continuously conduct business in the State of Texas and otherwise have minimum contacts with the State of Texas sufficient to establish personal jurisdiction over them.

12. Venue is appropriate under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claim occurred in this district. 24 Hour Covid alleges that Defendants violated the FFCRA and the CARES Act within the District Court of Texas.

## **STATEMENT OF FACTS**

### **I. BACKGROUND AS TO THE FFCRA AND THE CARES ACT**

13. Pursuant to Section 319 of the Public Health Service Act, on January 31, 2020, the Secretary of Health and Human Services (“HHS”) issued a determination that a Public Health Emergency exists and has existed as of January 27, 2020, due to confirmed cases of COVID-19 being identified in this country.<sup>4</sup>

14. On March 13, 2020, the President issued Proclamation 9994 declaring a National Emergency concerning the COVID-19 outbreak with a determination that a national emergency exists nationwide, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

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<sup>4</sup> See <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (Determination that a Public Health Emergency Exists).

15. To facilitate the nation's response to the COVID-19 pandemic, Congress passed the FFCRA and the CARES Act to, amongst other things, require group health plans and health insurance issuers offering group or individual health insurance coverage to: (i) provide benefits for certain items and services related to diagnostic testing for the detection or diagnosis of COVID-19 without the imposition of any cost-sharing requirements (*i.e.* deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements;<sup>5</sup> and (ii) to reimburse any provider for COVID-19 diagnostic testing an amount that equals the negotiated rate or, if the plan or issuer does not have a negotiated rate with the provider (*e.g.* 24 Hour Covid), the cash price for such service that is listed by the provider on its public website in accordance with 45 CFR § 182.40.<sup>6</sup>

16. To further clarify to issuers and health plans their legal expectations when processing a claim for Covid Testing in accordance with the FFCRA and the CARES Act, the Department of Labor (“DOL”), the Department of Health and Human Services (“HHS”), and the Department of the Treasury (the “Treasury”) (collectively, the “Departments”) jointly prepared and issued a series of Frequently Asked Questions (“FAQs”) to address any stakeholder questions or concerns pertaining to the proper adjudication of Covid Testing claims. The following FAQs summarize the health plan and issuers’ obligations as it pertains to covering and paying for Covid Testing services during the public health emergency:

**The Departments FAQ, Part 42, Q1:** *Which types of group health plans and health insurance coverage are subject to section 6001 of the FFCRA, as amended by section 3201 of the CARES Act?*

Section 6001 of the FFCRA, as amended by section 3201 of the CARES Act, applies to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans as defined in section 1251(e) of the Patient Protection and Affordable Care). The term “group health plan” includes both insured and self-insured group health

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<sup>5</sup> Pub. L. No. 116-127 (2020).

<sup>6</sup> Pub. L. No. 116-136 (2020).

plans. It includes private employment-based group health plans (ERISA plans), non-federal governmental plans (such as plans sponsored by states and local governments), and church plans.

“Individual health insurance coverage” includes coverage offered in the individual market through or outside of an Exchange, as well as student health insurance coverage (as defined in 45 CFR 147.145).<sup>7</sup>

**The Departments FAQ, Part 42, Q3:** *What items and services must plans and issuers provide benefits for under section 6001 of the FFCRA?*

Section 6001(a) of the FFCRA, as amended by Section 3201 of the CARES Act, requires plans and issuers to provide coverage for the following items and services:

(1) An in vitro diagnostic test as defined in section 809.3 of the title 21, Code of Federal Regulations, (or its successor regulations) for the detection of SARS-CoV-2 or the diagnosis of COVID-19, and the administration of such a test, that - ...

B. The developer has requested, or intends to request, emergency use authorization under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3), unless and until the emergency use authorization request under such section 564 has been denied or the developer of such test does not submit a request under such section within a reasonable timeframe;...<sup>8</sup>

**The Departments FAQ, Part 42, Q6:** *May a plan or issuer impose any cost-sharing requirements, prior authorization requirements, or other medical management requirements for benefits that must be provided under section 6001(a) of the FFCRA, as amended by section 3201 of the CARES Act?*

No. Section 6001(a) of the FFCRA provides that plans and issuers shall not impose any cost-sharing requirements (including deductibles, copayments, and coinsurance), prior authorization requirements, or other medical management requirements for these items and services. These items and services must be covered without cost sharing when medically appropriate for the individual, as determined by the individual’s attending healthcare provider in accordance with accepted standards of current medical practice.<sup>9</sup>

**The Departments FAQ, Part 42, Q7:** *Are plans and issuers required to provide coverage for items and services that are furnished by providers that have not agreed to accept a negotiated rate as payment in full (i.e., out-of-network providers)?*

Yes. Section 3202(a) of the CARES Act provides that a plan or issuer providing coverage of items and services described in section 6001(a) of the FFCRA shall reimburse the provider of the diagnostic testing as follows: ...

2. If the plan or issuer does not have a negotiated rate with such provider, the plan or issuer shall reimburse the provider in an amount that equals the cash price for such service as listed by

<sup>7</sup> See <https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

the provider on a public internet website, or the plan or issuer may negotiate a rate with the provider for less than such cash price...<sup>10</sup>

**The Departments FAQ, Part 43, Q9:** *Does Section 3202 of the CARES Act protect participants, beneficiaries, and enrollees from balance billing for a COVID-19 diagnostic test?*

The Departments read the requirement to provide coverage without cost sharing in section 6001 of the FFCRA, together with section 3202(a) of the CARES Act establishing a process for setting reimbursement rates, as intended to protect participants, beneficiaries, and enrollees from being balance billed for an applicable COVID-19 test. Section 3202(a) contemplates that a provider of COVID-19 testing will be reimbursed either a negotiated rate or an amount that equals the cash price for such service that is listed by the provider on a public website. In either case, the amount the plan or issuer reimburses the provider constitutes payment in full for the test, with no cost sharing to the individual or other balance due. Therefore, the statute generally precludes balance billing for COVID-19 testing. However, section 3202(a) of the CARES Act does not preclude balance billing for items and services not subject to section 3202(a), although balance billing may be prohibited by applicable state law and other applicable contractual agreements.<sup>11</sup>

**The Departments FAQ, Part 44, Q1:** *Under the FFCRA, can plans and issuers use medical screening criteria to deny (or impose cost sharing on) a claim for COVID-19 diagnostic testing for an asymptomatic person who has no known or suspected exposure to COVID-19?*

No. The FFCRA prohibits plans and issuers from imposing medical management, including specific medical screening criteria, on coverage of COVID-19 diagnostic testing. Plans and issuers cannot require the presence of symptoms or a recent known or suspected exposure, or otherwise impose medical screening criteria on coverage of tests.

When an individual seeks and receives a COVID-19 diagnostic test from a licensed or authorized health care provider, or when a licensed or authorized health care provider refers an individual for a COVID-19 diagnostic test, plans and issuers generally must assume that the receipt of the test reflects an “individualized clinical assessment” and the test should be covered without cost sharing, prior authorization, or other medical management requirements.<sup>12</sup>

**The Departments FAQ, Part 44, Q3:** *Under the FFCRA, are plans and issuers required to cover COVID-19 diagnostic tests provided through state- or locality-administered testing sites?*

Yes. As stated in FAQs Part 43, Q3, any health care provider acting within the scope of their license or authorization can make an individualized clinical assessment regarding COVID-19 diagnostic testing. If an individual seeks and receives a COVID-19 diagnostic test from a licensed or authorized provider, including from a state- or locality-administered site, a “drive-through” site,

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<sup>10</sup> *Id.*

<sup>11</sup> See <https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf>; See also FAQ Part 43 Q12: ... Because the Departments interpret the provisions of section 3202 of the CARES Act as specifying a rate that generally protects participants, beneficiaries, and enrollees from balance billing for a COVID-19 test (see Q9 above), the requirement to pay the greatest of three amounts under the regulations implementing section 2719A of the PHS Act is superseded by the requirements of section 3202(a) of the CARES Act with regard to COVID-19 diagnostic tests that are out-of-network emergency services. For these services, the plan or issuer must reimburse an out-of-network provider of COVID-19 testing an amount that equals the cash price for such service that is listed by the provider on a public website, or the plan or issuer may negotiate a rate that is lower than the cash price.

<sup>12</sup> See <https://www.cms.gov/files/document/faqs-part-44.pdf>.

and/or a site that does not require appointments, plans and issuers generally must assume that the receipt of the test reflects an “individualized clinical assessment.”<sup>13</sup>

**The Departments FAQ, Part 44, Q5:** *What items and services are plans and issuers required to cover associated with COVID-19 diagnostic testing? What steps should plans and issuers take to help ensure compliance with these requirements?*

... Plans and issuers should maintain their claims processing and other information technology systems in ways that protect participants, beneficiaries, and enrollees from inappropriate cost sharing and should document any steps that they are taking to do so...<sup>14</sup>

17. To supplement the FAQs publicized by the Departments, the Internal Revenue Service (the “IRS”) issued Notice 2020-15 pertaining to high deductible health plans (“HDHPs”) and expenses related to COVID-19 to provide members of HDHPs (including those HDHPs administered by the 90 Degree Benefits TPA) the confidence that Covid Testing will be covered, in full, by their HDHP. Notice 2020-15 states as follows:

[d]ue to the unprecedented public health emergency posed by COVID-19, and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19 [emphasis added], a health plan that otherwise satisfies the requirements to be an HDHP under section 223(c)(2)(A) will not fail to be an HDHP merely because the health plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.

18. In addition to the federal guidance publicized by the Departments, the Texas Department of Insurance (“TDI”) issued Commissioner’s Bulletin # B-0017-20, which also pertains to coverage for COVID-19 testing and network adequacy. In this Bulletin, TDI mandates exclusive provider networks (“EPOs”) and health maintenance organizations (“HMOs”) to comply with the Covid Testing adjudication requirements of the FFCRA and the CARES Act, and “instructs health plans to pay a provider’s negotiated rate or, if a health plan does not have a negotiated rate with the provider, pay the provider’s publicly available cash price for testing [emphasis added].”<sup>15</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> In an inquiry posed by 24 Hour Covid to TDI pertaining to the applicability of Commissioner’s Bulletin #B-0017-



**II. DEFENDANTS NON-COMPLIANCE WITH FEDERAL AND STATE REGULATIONS.**

19. 90 Degree Benefits is a health benefits company that provides full third-party claims administration services to self-funded health plans, like TSHBP.

20. Members of Defendants' health plans received Covid Testing services from 24 Hour Covid that were determined to be medically necessary by a medical practice/physician prior to 24 Hour Covid providing any Covid Testing services.

21. After the Covid Testing services were provided to members of Defendants' health plans, 24 Hour Covid timely submitted claims to 90 Degree Benefits for payment. 24 Hour Covid provided such services in good faith, and, as such, reasonably expected a fair and timely payment in return from 90 Degree Benefits and TSHBP. As detailed above, Section 6001 of the FFCRA requires mandatory coverage of Covid Testing services and Section 3202(a) of the CARES Act requires health plans and issuers to pay OON Covid Testing providers either: (i) cash prices as publicized by the providers or (ii) a negotiated amount.

22. 90 Degree Benefits representative, Michelle Bruce, initially reached out to 24 Hour Covid nearly one year ago in what Plaintiff initially believed was an attempt to negotiate a payment amount as required by Section 3202(a) of the CARES Act; however, despite 24 Hour Covid's constant attempts to work with Ms. Bruce, no response was ever provided by Ms. Bruce. 24 Hour

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20 to PPO and POS plans, TDI states the following: "Yes, it is TDI's position that PPO and POS plans must also comply with FFCRA and the 'CARES Act' ... Commissioner's Bulletin #B-0017-20 made it expressly clear that in-network based plans, "insurers offering exclusive provider networks (EPOs) and health maintenance organizations (HMOs)... fall within the federal definitions for group health plans or health insurance issuers offering group or individual health insurance coverage." Presumably, the purpose of the bulletin was to expressly clarify for network-based plans such as EPOs and gated HMO plans our expectation to protect consumers regardless of network affiliation, as contemplated by the CARES Act and by Texas' laws. PPO and EPO issuers are subject to but not limited to Texas Insurance Code (TIC) Chapter 1301. HMOs may issue POS plans as required under TIC Chapter 1273. As PPO and POS plans are captured under the terms "issuer", "HMO", "group health plans", "health insurance issuers", and "individual health insurance coverage"; PPO and POS plans are not excluded from compliance."

Covid sent several emails over the course of the coming weeks and months, but neither Ms. Bruce nor any representative of 90 Degree Benefits ever responded.<sup>16</sup>

23. After several months of inaction from 90 Degree Benefits, 24 Hour Covid again attempted to reach out to 90 Degree Benefits to negotiate an amount to be paid. 24 Hour Covid sent several emails and made several calls to 90 Degree Benefits, and, despite 90 Degree Benefits repeated representations that 24 Hour Covid will be provided an agreement to memorialize the negotiated rates for Covid Testing services, 90 Degree Benefits again fell silent.<sup>17</sup>

24. 24 Hour Covid clearly attempted to work in good faith with 90 Degree Benefits and TSHBP, but, unfortunately, no good deed goes unpunished. Not only has 90 Degree Benefits not reciprocated 24 Hour Covid's efforts, but 90 Degree Benefits and TSHBP have commenced with denying the majority of Covid Testing claims submitted by 24 Hour Covid. 90 Degree Benefits, as a third-party claims administrator of TSHBP, has and continues to act in bad faith.

25. 90 Degree Benefits and TSHBP have failed to cover Covid Testing services in compliance with Section 6001 of the FFCRA and reimburse 24 Hour Covid in compliance with Section 3202(a) of the CARES Act. Through its failure to comply with these strict requirements, it has left numerous patients financially responsible for the balance between the amounts paid by the Defendants and the billed amount/cash price. The manner in which 90 Degree Benefits adjudicated TSHBP's members' Covid Testing claims is in complete conflict with Congress and the Departments' intentions that no covered individual is to ever be left financially responsible for Covid Testing services as it pertains to their cost-sharing and balance-billing obligations.<sup>18</sup>

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<sup>16</sup> Exhibit P-1 (Email Correspondence Regarding 24 Hour Covid's First Attempt to Negotiate Covid Testing Rates).

<sup>17</sup> Exhibit P-2 (Email Correspondence Regarding 24 Hour Covid's Second Attempt to Negotiate Covid Testing Rate); Exhibit P-3 (Additional Email Correspondence Regarding 24 Hour Covid's Second Attempt to Negotiate Covid Testing Rate).

<sup>18</sup> The Departments FAQ, Part 44, Q9:

**Does Section 3202 of the CARES Act protect participants, beneficiaries, and enrollees from balance billing for a COVID-19 diagnostic test?**

## **CAUSES OF ACTION**

### **STANDING TO PURSUE A CLAIM UNDER THE FFCRA AND CARES ACT**

26. 24 Hour Covid has standing to sue under the FFCRA and the CARES Act. The Court in *Diagnostic Affiliates of Northeast Hou, LLC v. United Healthcare Services, Inc. et al* concluded there is an implied private right of action to enforce the provisions of the FFCRA and CARES Act reimbursement requirement.<sup>19</sup> The Court, to determine this, used the rubric set out by the Supreme Court in *Cort v. Ash*<sup>20</sup>, along with *Touche Ross & Co. v. Redington*<sup>21</sup> to determine whether Congress intended a private cause of action in drafting the FFCRA and the CARES Act.

27. The Court considering the four factors set out in *Cort* and giving the greatest weight to the first 3 factors as most indicative of Congress's intent, concluded 24 Hour Covid established the very heavy burden to show that Congress intended a private enforcement in regard to the FFCRA and CARES Act, and overcame the presumption that Congress did not intend to create a private cause of action.<sup>22</sup> To summarize, 24 Hour Covid is a part of the class intended to benefit from the statute because: (i) of the mandatory reimbursement language in the statute; (ii) the evidence of legislative intent to create a private right of action since the FFCRA and CARES Act state clear rights to reimbursement; and (iii) the Court concluded a private right of action is consistent with the Legislative scheme since Congress mandated reimbursement.

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The Departments read the requirement to provide coverage without cost sharing in section 6001 of the FFCRA, together with section 3202(a) of the CARES Act establishing a process for setting reimbursement rates, as intended to protect participants, beneficiaries, and enrollees from being balance billed for an applicable COVID-19 test. Section 3202(a) contemplates that a provider of COVID-19 testing will be reimbursed either a negotiated rate or an amount that equals the cash price for such service that is listed by the provider on a public website. In either case, the amount the plan or issuer reimburses the provider constitutes payment in full for the test, with no cost sharing to the individual or other balance due.

<sup>19</sup> *Diagnostic Affiliates of Northeast Hou, LLC. V. United Healthcare Services, Inc., et al.*, No. 2:21-CV-00131, (S.D. Tex. Jan. 19, 2022)

<sup>20</sup> *Cort v. Ash*, 422 U.S. 66, 78 (1975)

<sup>21</sup> *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575–76 (1979)

<sup>22</sup> *Acara v. Banks*, 4701 F. 3d 569, 571 (5<sup>th</sup> Circ. 2006)(per curiam).

**COUNT I: VIOLATION OF THE FFCRA AND THE CARES ACT**  
***(Against All Defendants)***

28. The foregoing allegations are re-alleged and incorporated by reference as if fully set forth herein.

29. The Covid Testing services that 24 Hour Covid provided to members of TSHBP's health plans administered by 90 Degree Benefits constitute as in vitro diagnostic products for the detection of COVID-19, as provided by Section 6001 of the FFCRA.

30. 24 Hour Covid is an OON laboratory and did not have a negotiated rate with 90 Degree Benefits or TSHBP for the provision of Covid Testing services despite 24 Hour Covid's multiple attempts to amicably work with Defendants in good faith.

31. In compliance with the CARES Act, 24 Hour Covid posted its cash prices for Covid Testing services on its public website.

32. Under section 3202(a)(2) of the CARES Act, if a health plan does not have a negotiated rate with a provider, such as 24 Hour Covid, for providing Covid Testing services, the health plan is obligated to pay the provider its posted cash price for providing those services.

33. By reason of the foregoing, 24 Hour Covid has been injured.

34. Based on the above, 24 Hour Covid is entitled to judgment against 90 Degree Benefits and TSHBP in an amount to be determined at the trial of this matter, plus interest thereon, together with the costs and disbursements of this action, including reasonable attorneys' fees.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

**PRAYER**

Plaintiff demands judgment in its favor against the Defendants as follows:

1. Declaring that the Defendants have breached the FFCRA and the CARES Act regarding the coverage and reimbursement of the Covid Testing service claims submitted by 24 Hour Covid, as well as awarding injunctive and declaratory relief to prevent 90 Degree Benefits and TSHBP's continuous actions detailed herein;
2. All costs and expenses associated with this lawsuit, including, but not limited to, court costs and attorneys' fees; and
3. For such other relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Ebad Khan  
Ebadullah (Ebad) Khan  
Federal Bar No. 2810999  
State Bar No. 2409265  
[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)  
23330 US-59, Suite 300  
Kingwood, Texas 77339  
(281) 319.8306 Direct  
(281) 605.6690 Facsimile

***Attorney for Plaintiff***

**From:** [Ebad Khan](#)  
**To:** [Michele Bruce](#)  
**Cc:** [Ivan T](#)  
**Subject:** RE: 90DB: LOA Request - For Review  
**Date:** Monday, November 29, 2021 3:40:00 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)

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Hi Michele – I hope all is well. It has been several months since we've last spoken. We were moving towards agreeing on an amount to be paid for covid testing in addition to a network agreement. We did reach out several times but did not receive any follow up.

Please let us know if what we had originally discussed remains of interest to you and your organization. If not, then we will move forward with escalating accordingly. From our records it shows that 90 Degree Benefits is not adjudicating the majority of Covid Testing claims in compliance with the FFCRA and the CARES Act despite our efforts to negotiate a rate. Because of this, we are pursuing legal action against insurers/TPAs for their non-compliant practices.

We look forward to hearing from you.

Regards,

**Ebad Khan**  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



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**From:** Ebad Khan  
**Sent:** Thursday, May 27, 2021 3:09 PM  
**To:** Michele Bruce <[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hi Michele,

As we have yet to hear from your organization we expect all COVID-19 diagnostic testing claims submitted to health plans that 90 Degree Benefits administers to be adjudicated and paid in full no later than Friday, June 11. If full payment is not made on each and every one of the qualifying claims then we will move forward with pursuing any and all remedies available to us directly against the health plans that 90 Degree Benefits administers in order to have these claims processed correctly.

Regards,

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**From:** Michele Bruce <[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)>  
**Sent:** Monday, May 17, 2021 9:39 AM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - For Review  
**Importance:** High

Hi Ebad,

My apologies for delay in response.

Yes, there is still interest on our end.

I have been covered up with another high priority deliverable but intend to follow up with you later in the week.

Please allow me to reach back out to your team at tail end of week.

Best,

Michele

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**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Monday, May 17, 2021 9:31 AM  
**To:** Michele Bruce <[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hi Michele – I hope you are doing well. I recently left you a voicemail as well.

We have yet to hear from you regarding 90 Degree Benefits' progress towards preparing an in-network arrangement to include the amount we negotiated for COVID-19 diagnostic testing, a contracted rate for all other types of ancillary services that falls within the laboratory's scope of practice, and a provision that prohibits other payers/health plans from accessing the rates we have agreed upon (i.e silent PPO).

Please confirm that this is still your organization's intention, otherwise, we will move forward with attempting the full cash price for our services directly from the health plans that 90 Degree Benefits administers.

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**From:** Ebad Khan  
**Sent:** Wednesday, April 28, 2021 2:53 PM



**To:** Michele Bruce <[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)>

**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>

**Subject:** RE: 90DB: LOA Request - For Review

I am including Ivan in this communication. Ivan, if there is any additional information you may need from Michele then please request it now if you can.

Michelle - Can you also please provide a list of all the health plans that your organization administers as a TPA and the Group Number's associated with such health plans? Also, a list of the claims that we have submitted and are currently pended would be helpful for our review as we negotiate this potential network arrangement.

Please do not hesitate to contact me if you any questions.

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**From:** Michele Bruce <[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)>

**Sent:** Wednesday, April 28, 2021 12:51 PM

**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>

**Subject:** 90DB: LOA Request - For Review

**Importance:** High

**Hi Ebad,**

**Thank you for time.**

**Kindly find copy of Letter of Agreement (LOA) prepared for your review.**

If accepting, please sign and return to my attention via email.

Please verify name of lab as this was entered as: Diagnostic Affiliates of Northeast Houston.

We value your partnership and commitment to the health concerns of the Texas Schools Health Benefits Program.

Best Regards,



**Michele Bruce**

*Cost Containment - Patient Advocate*

Toll-free: 800.747.9446

Office: 806.698.5819

Cell: 806.300.3342

Fax: 806.698.5863

[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)

4401 82nd Street, Suite 1200

Lubbock, TX 79424



| [90DegreeBenefits.com](https://www.90DegreeBenefits.com)

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**From:** [Carrie Bullard](#)  
**To:** [Ebad Khan](#); [Geraldine Oakley](#)  
**Cc:** [Ivan T](#)  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.  
**Date:** Tuesday, December 21, 2021 7:59:08 AM  
**Attachments:** [image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)

Good morning,

Debbie is still reviewing the data to make certain all the information is complete to send to you.

We initially thought she would have the report ready to send yesterday afternoon and she hasn't completed it yet.

Our goal is to have it to you this afternoon.

Thank you kindly for your patience,



**Carrie Bullard**  
*Patient Advocate Specialist SCA*

Toll-free: 800.747.9446  
Office: 210.858.4868  
Fax: 210.442.4670  
[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)

11467 Huebner Rd, Suite 300  
San Antonio, TX 78230

[90DegreeBenefits.com](http://90DegreeBenefits.com)

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Monday, December 20, 2021 5:01 PM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Great, thank you.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Monday, December 20, 2021 1:29 PM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Good afternoon,

Debbie has the report and is reviewing the entries.

She will send it to you by COB.

Appreciatively,

**Carrie Bullard**  
*Patient Advocate Specialist SCA*  
Office: 210.858.4868  
Fax: 210.442.4670

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

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**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Monday, December 20, 2021 11:54 AM  
**To:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Hi Carrie – Can you please provide an update on when we should expect to receive the additional materials that we requested? Your colleague, Debbie, did give me her number but is it possible to be provided with her email or to simply just add her to this thread. Thanks. We'd like to make a decision on what to do within the next couple of days but we need these materials.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



---

**From:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Sent:** Wednesday, December 15, 2021 1:01 PM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Ms. Bullard,

Sure – will you be sending the zoom link?

Thank you,

Geraldine “Jeri” Oakley  
Paralegal  
Office Phone: 281.319.8378 Ext. 9208  
Mobile: 346.402.6123  
[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)



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**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Wednesday, December 15, 2021 12:27 PM  
**To:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Hello,

We have decided to use Zoom for our 2:30 meeting.

Appreciatively,

*Carrie Bullard*

*Patient Advocate Specialist SCA*  
Office: 210.858.4868  
Fax: 210.442.4670

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

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**From:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Sent:** Wednesday, December 15, 2021 11:51 AM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Thank you – I will put it on the calendar with your office number.

Geraldine "Jeri" Oakley  
Paralegal  
Office Phone: 281.319.8378 Ext. 9208  
Mobile: 346.402.6123  
[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)



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**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Wednesday, December 15, 2021 11:48 AM  
**To:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.

Telephone conference please.

Appreciatively,

*Carrie Bullard*

*Patient Advocate Specialist SCA*  
Office: 210.858.4868  
Fax: 210.442.4670

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

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**From:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Sent:** Wednesday, December 15, 2021 11:41 AM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90DB: LOA Request - Call Today at 2:30 p.m.  
**Importance:** High

Ms. Bullard,

Both Mr. Khan and Mr. Tarasenko are available for the call at 2:30 p.m. today. Would you like a telephone conference or a zoom call?

Geraldine "Jeri" Oakley  
Paralegal  
Office Phone: 281.319.8378 Ext. 9208  
Mobile: 346.402.6123  
[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)



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**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Wednesday, December 15, 2021 11:25 AM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

We have these times available. Which is best for you:

1:00  
1:30  
2:00  
2:30

Appreciatively,

**Carrie Bullard**

*Patient Advocate Specialist SCA*

Office: 210.858.4868  
Fax: 210.442.4670

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Wednesday, December 15, 2021 10:42 AM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Including our organization's VP as well.

I am generally available so please feel free to recommend a time. Thanks.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Wednesday, December 15, 2021 10:39 AM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hello Mr. Khan,

We would like to settle this issue and get your claims processed correctly and promptly.  
My VP and I would like to have a call with you today to discuss. Please let me know when you are available for a call.

Appreciatively,



**Carrie Bullard**  
*Patient Advocate Specialist SCA*

Toll-free: 800.747.9446  
Office: 210.858.4868  
Fax: 210.442.4670  
[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)

11467 Huebner Rd, Suite 300  
San Antonio, TX 78230

[90DegreeBenefits.com](http://90DegreeBenefits.com)

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Wednesday, December 15, 2021 9:04 AM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Cc:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Thank you for your response. I think there are just a couple things that remain unanswered:

1. Do you have an update as to when we can be provided with an updated claims list?
2. Section 3202(a) of the CARES requires health plans/insurers to pay an out-of-network provider for Covid Testing services either (i) the cash price publicized by the provider on its website or (ii) a negotiated amount. **Because no signed agreement was ever reached with Michelle and 90 Degree Benefits no longer needs direct contracting for Covid Testing services then can you please confirm that 24 Hour Covid will then be reimbursed its full cash price for any and all Covid Testing claims it adjudicates.** Our claims data shows that 90 Degree Benefits has not been reimbursing us at our cash rates which is what sparked the initial communications regarding a negotiated rate/contracting.



3. Also, our initial contracting discussions was for Covid Testing and other laboratory services. We can understand that 90 Degree Benefits no longer feels the need to negotiate rates for Covid Testing but the initial discussions also included a contracted rate for all types of Covid Testing services that falls under the scope of our CLIA Certification. Is that no longer on the table as well?

Clarification on the above points will be greatly appreciated. Thanks.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



---

**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Wednesday, December 15, 2021 8:42 AM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Cc:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hello,

The issue was the claims we are showing denied because the W-9 we had on file had a physical location address and the claims have a PO Box. We received your updated W-9 and are processing your claims.

A direct contract is not necessary to get your claims paid since they are Covid testing.  
Your initial email with Michele Bruce was back in April and we no longer have a need for direct contracts for Covid testing.

Best regards,



**Carrie Bullard**  
*Patient Advocate Specialist SCA*  
  
Toll-free: 800.747.9446  
Office: 210.858.4868  
Fax: 210.442.4670  
[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)  
  
11467 Huebner Rd, Suite 300  
San Antonio, TX 78230  
  
[90DegreeBenefits.com](http://90DegreeBenefits.com)

90 Degree Benefits will be closed for the Christmas Holiday on Thursday, December 23rd and Friday, December 24th and will reopen on December 27th.

---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Tuesday, December 14, 2021 1:46 PM  
**To:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Cc:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Carrie – Are you able to provide an update on this? Is the opportunity to contract still on the table?

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



---

**From:** Ivan Tarasenko <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Sent:** Tuesday, December 7, 2021 5:14 PM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>; Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Cc:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** Re: 90DB: LOA Request - For Review  
**Importance:** High

Hello Carrie,

Please see attached W-9 with updated record. Please let us know if you may need anything else.

Thank you.

Sincerely,

Ivan Tarasenko  
VP of Strategic Initiatives  
Office: [1-281-359-3223 ext.9205](tel:1-281-359-3223)  
Direct: [1-281-319-8303](tel:1-281-319-8303)  
Fax: [1-281-605-6690](tel:1-281-605-6690)

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---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Tuesday, December 7, 2021 10:41 AM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Cc:** Ivan Tarasenko <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hi Carrie,

Ivan will provide an updated copy of the W-9.

More importantly for us however is the status and/or potential for contract negotiations. We were looking forward to entering into a contract with your company but then had the rug pulled out from underneath us. This has been an open-ended issue for us for some time now. We need to know if this offer is still on the table, and, if so, when we will be presented with a contract. I am hopeful that we can navigate these issues together because escalating this issue to the Texas Department of Insurance and/or through some civil suit will over complicate things.

Thanks in advance for your assistance. Please let us know when we can expect a response.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: [281-319-8306](tel:281-319-8306)  
Mobile: [832-202-6028](tel:832-202-6028)  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



**24 Hour Covid**  
RT-PCR LABORATORY

---

**From:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Sent:** Tuesday, December 7, 2021 10:19 AM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hello,

My schedule is full most of this week and I will not be available for a call. Please forward a copy of your W9 with the payment address showing what is on the claims at PO Box 2107 Houston TX.

Appreciatively,

*Carrie Bullard*

*Patient Advocate Specialist SCA*  
Office: 210.858.4868  
Fax: 210.442.4670

---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Monday, December 6, 2021 4:54 PM  
**To:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Subject:** RE: 90DB: LOA Request - For Review

Hi Carrie – There seems to be some confusion. Ivan and I are unclear as to why this would result in any issues especially since we are receiving some payment from 90 Degree Benefits. Can we get on a call tomorrow to discuss this matter further? Please let me know your availability for a call.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



**24 Hour Covid**  
RT-PCR LABORATORY

From: Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>

Sent: Monday, December 6, 2021 4:00 PM

To: Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>

Cc: Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>

Subject: RE: 90DB: LOA Request - For Review

Good afternoon,

We pulled your claims and it appears they denied for updated W9.

The W9 we have on file has a different address than the billing address in box 33 on the CMS 1500 claim form. (see image below)

These addresses must match for us to issue payment.

Is this the W9 is that the use for the IRS?

The claim has:

6		25. FEDERAL TAX ID NUMBER <b>851991956</b>		26. PATIENT'S ACCOUNT NO. <b>0174208</b>	27. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	28. TOTAL CHARGE <b>\$ 1253.00</b>	29. AMOUNT PAID <b>\$ 0.00</b>	30. BALANCE DUE <b>\$ 1253.00</b>
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)  <b>Signature on File</b>  SIGNED _____ DATE _____		32. SERVICE FACILITY LOCATION INFORMATION  <b>DIAGNOSTIC AFFILIATES OF NORTHEAST HOUSTON 22751 PROFESSIONAL DRIVE STE 210 KINGWOOD, TX 773399998</b>		33. BILLING PROVIDER INFO & PH #  <b>DIAGNOSTIC AFFILIATES OF NORTHEAST HOUSTON PO BOX 2107 HOUSTON, TX 77252 2813198333</b>  a. NPI <b>1154930279</b> b. _____				

NUCC Instruction Manual available at: [www.nucc.org](http://www.nucc.org) APPROVED OMB-0938-0999 FORM CMS-1500 (08/05)

The W9 has

Form <b>W-9</b> (Rev. October 2018) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer Identification Number and Certification</b> ▶ Go to <a href="http://www.irs.gov/FormW9">www.irs.gov/FormW9</a> for instructions and the latest information.	Give Form to the requester. Do not send to the IRS.
1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>Diagnostic Affiliates of Northeast Hou, LLC</b>		
2 Business name/disregarded entity name, if different from above <b>24 Hour Covid RT PCR Laboratory</b>		
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.		
<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ <b>S</b> Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ▶ _____		
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>		
5 Address (number, street, and apt. or suite no.) See instructions. <b>22751 Professional Drive, Suite 210</b>		Requester's name and address (optional)
6 City, state, and ZIP code <b>Kingwood TX 77339</b>		
7 List account number(s) here (optional)		

Appreciatively,



A Turn For The Better

**Carrie Bullard**  
Patient Advocate Specialist SCA  
Toll-free: 800.747.9446  
Office: 210.858.4868  
Fax: 210.442.4670  
[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)  
11467 Huebner Rd, Suite 300  
San Antonio, TX 78230



[90DegreeBenefits.com](http://90DegreeBenefits.com)

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Thursday, December 2, 2021 3:51 PM  
**To:** Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Subject:** Re: 90DB: LOA Request - For Review

The cpt codes that we are utilizing for Covid testing are: U0004, U0005, G2023. Please let me know if you need anything else

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**From:** Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Sent:** Thursday, December 2, 2021 2:43:32 PM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Subject:** FW: 90DB: LOA Request - For Review

Good Afternoon,

I am just following up on our phone call from yesterday.

We have requested a claims report from our claims department for the claims in question. This usually takes awhile to pull the report.

Could you please provide the CPT codes that you are inquiring about?

I will keep you posted on the status.

Thank you,

**Margaret Mathieu**

*Patient Advocate Specialist*

Office: 210.858.4871

Fax: 210.348.7112

---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Tuesday, November 30, 2021 3:04 PM  
**To:** Margaret Mathieu <[Margaret.Mathieu@90degreebenefits.com](mailto:Margaret.Mathieu@90degreebenefits.com)>  
**Cc:** Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Subject:** FW: 90DB: LOA Request - For Review  
**Importance:** High

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Here is the LOA that was sent by Ms. Bruce.

Also, can you please provide a claims report for all the claims at issue.

NPI: 1154930279

Tax ID: 85-1991956

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



---

**From:** Michele Bruce <[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)>  
**Sent:** Wednesday, April 28, 2021 12:51 PM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Subject:** 90DB: LOA Request - For Review  
**Importance:** High

Hi Ebad,

Thank you for time.

Kindly find copy of Letter of Agreement (LOA) prepared for your review.

If accepting, please sign and return to my attention via email.

Please verify name of lab as this was entered as: Diagnostic Affiliates of Northeast Houston.

We value your partnership and commitment to the health concerns of the Texas Schools Health Benefits Program.

Best Regards,



**Michele Bruce**

*Cost Containment - Patient Advocate*

Toll-free: 800.747.9446

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Cell: 806.300.3342

Fax: 806.698.5863

[Michele.Bruce@90degreebenefits.com](mailto:Michele.Bruce@90degreebenefits.com)

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**From:** [Debbie Ashley](#)  
**To:** [Ebad Khan](#); [Geraldine Oakley](#)  
**Cc:** [Carrie Bullard](#); [Ivan T](#)  
**Subject:** RE: 90 DB Lab processing claims  
**Date:** Thursday, January 13, 2022 8:53:49 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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Good morning Ebad,

I am trying to get an ETA of the completion of the processing the claims in house. Because there are so many, it will take a few days. I will let you know once I hear back from the Claims Director.

I will send you the agreement today and it will state 175% of Medicare. I was able to get that approved even though it is over the plan reimbursement guidelines.

I look forward to working with you and your Team.

Have a great day and I will be in touch.

Thank you kindly,

Debbie

***Debbie Ashley***

***Vice President of Cost Containment***

Office: 806.698.5885

Cell: 817.301.4698

Fax: 806.698.5863

---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Wednesday, January 12, 2022 12:44 PM  
**To:** Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90 DB Lab processing claims  
**Importance:** High

Thank you, Debbie. I apologize for sending an abrupt message, but we really need to move forward with this. Can you tell us when we can expect the proposed draft of the contract?

Also, when we last spoke over the phone, we had discussed that we'd be willing to accept your offer only if all claims, including Covid Testing, to be adjudicated at 175% of Medicare. If I recall correctly, I believe you said that 175% was agreeable. If that is not the case then please do let me know as soon as possible as this may create another obstacle for us.

---

**From:** Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>  
**Sent:** Wednesday, January 12, 2022 12:11 PM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>  
**Subject:** RE: 90 DB Lab processing claims

Good morning Ebad,

I apologize for the delay in getting back to you. I have been working with my Claims department to have a dedicated person assigned to reprocessing all the claims that denied or short paid at the 175% rate.

We most definitely want to partner with you and are looking forward to a long and fruitful relationship.

I am also working out the Pre-service advance payment program that we discussed for these particular claims. For all of the "inhouse" claims, it looks as though the best solution would be to follow the normal claim process and issue payment in the standard format. Going forward with new claims, we will invoke the pre-service advance payment. I will give you a call to make certain any questions you may have can be answered.

As far as the new claims that you will be submitting, I remembered agreeing on 150% because that is the reimbursement allowable on the plan. If we need to discuss, just let me know.

Kind regards,

Debbie

**Debbie Ashley**

**Vice President of Cost Containment**

Office: 806.698.5885

Cell: 817.301.4698

Fax: 806.698.5863

---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>

**Sent:** Wednesday, January 12, 2022 11:43 AM

**To:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>; Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>

**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>

**Subject:** RE: 90 DB Lab processing claims

**Importance:** High

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Hi Debbie,

We are still patiently waiting for the network agreement that we had agreed to in principle and was promised to us yet again. The agreement being an agreed rate of 175% of the applicable Medicare rates for Covid Testing services, in addition to 175% of Medicare for all other lab services. This is becoming eerily reminiscent of our last encounter with Michelle which is a bit frustrating.

We have gone above and beyond in accommodating 90 Degree Benefits to this point. If it is no longer in 90 Degree Benefits interest to move forward then please do let us know immediately. Regardless, if no response is provided by close of business today, then we will assume that 90 Degree Benefits is no longer interested in negotiating a rate to be paid on Covid Testing claims, therefore, shall be responsible for paying our organization the cash price that it has publicized on our website in accordance with Section 3202(a) of the CARES Act.



During our multiple calls with you, Michelle, and Carrie, I made it clear that we are wanting to work in good faith to amicably resolve our payment issues, however, we have again found ourselves to be chasing 90 Degree Benefits to fulfill an obligation that it is legally required to comply with. If no response is provided today, we will be seeking full payment directly against the self-funded health plan clients of 90 Degree Benefits, and they will be made aware of 90 Degree Benefits failures to negotiate rates on their behalf. It will also be made abundantly clear to the self-funded health plans that 90 Degree Benefits has failed to negotiate a Covid testing rate, and that 90 Degree Benefits' failures have resulted in additional costs to the health plan, including, but not limited to, the increase in costs of paying 24 Hour Covid's cash prices instead of the attempted negotiated rates.

We look forward to hearing from you.

---

**From:** Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Sent:** Tuesday, January 11, 2022 3:34 PM  
**To:** Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Subject:** RE: 90 DB Lab processing claims

Ms. Ashley,

Happy Tuesday. I was just following up on the network contract and claims (see emails below regarding same).

I tried to reach you by phone today, but I couldn't get through and I left you a message. Would you be so kind as to call us, or email us, at your earliest convenience?

Geraldine "Jeri" Oakley  
Paralegal  
Office Phone: 281.319.8378 Ext. 9208  
Mobile: 346.402.6123  
[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)



---

**From:** Geraldine Oakley  
**Sent:** Monday, January 10, 2022 2:17 PM  
**To:** Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Subject:** RE: 90 DB Lab processing claims

Ms. Ashley,

Mr. Khan asked me to send you a quick email to see if you need anything else from our office?

It was my understanding that we had an agreement as to the prior claims, and that we are working towards a network contract? Please let me know what else needs to happen to resolve this issue - as I am happy to assist you.

Geraldine "Jeri" Oakley  
Paralegal  
Office Phone: 281.319.8378 Ext. 9208  
Mobile: 346.402.6123  
[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)



---

**From:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Sent:** Friday, January 7, 2022 10:40 AM  
**To:** Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>; Ivan T <[ivant@danhlabs.com](mailto:ivant@danhlabs.com)>; Geraldine Oakley <[goakley@24hourcovid.com](mailto:goakley@24hourcovid.com)>  
**Subject:** RE: 90 DB Lab processing claims

Good morning Debbie,

I hope you are enjoying your Friday morning. Can you please provide us with an update as to when we can expect to receive the network contract? Thanks.

Regards,

Ebad Khan  
Chief Legal Officer  
Direct: 281.319.8306  
Mobile: 832.202.6028  
Email: [ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)



---

**From:** Debbie Ashley <[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)>  
**Sent:** Tuesday, December 21, 2021 1:51 PM  
**To:** Ebad Khan <[ekhan@24hourcovid.com](mailto:ekhan@24hourcovid.com)>  
**Cc:** Carrie Bullard <[Carrie.Bullard@90degreebenefits.com](mailto:Carrie.Bullard@90degreebenefits.com)>  
**Subject:** 90 DB Lab processing claims

Good afternoon Ebad,

Please see the attached spreadsheet regarding the claims in question.

I look forward to talking with you about the opportunities we discussed on our recent call.

Please contact me at your earliest convenience. I will be out of the office beginning Thursday and returning January 3<sup>rd</sup>, 2022.

- The first tab contains claims that were paid on the first submission and no duplicate claims were submitted. These claims can be reworked after we come to an agreement.
- The second tab are claims that contained duplicate submissions (same DOS and same charge amounts) where one claim was paid and the other was denied. We deleted the denied claims and placed the paid claims in this tab to be reworked after we come to an agreement.
- The third tab is a list of claims that do not have duplicates but were denied.
- The fourth and final tab is a listing of claims that contain duplicate submissions but all were denied.
- The total number of claims that have never issued a payment (tabs 3 and 4) represent 133 claims
- Total rework claims total 78

As we discussed in our call the other day:

- we can process all of the claims listed above at 175% of Medicare
- claims will be reprocessed and payment made in one lump sum via ACH or credit card

If you have any questions, please feel free to contact me.

Kind regards,

Debbie



**Debbie Ashley**

*Vice President of Cost Containment*

Toll-free: 800.747.9446

Office: 806.698.5885

Mobile: 817.301.4698

Fax: 806.698.5863

[Debbie.Ashley@90degreebenefits.com](mailto:Debbie.Ashley@90degreebenefits.com)

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Lubbock, TX 79424

[90DegreeBenefits.com](http://90DegreeBenefits.com)

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